

1 CATHY A. SPICER, WSBA NO. 15416 HONORABLE LONNY R. SUKO
2 GABRIEL BAKER, WSBA NO. 28473
3 LANE POWELL PC
4 1420 Fifth Avenue, Suite 4100
5 Seattle, Washington 98101-2338
6 Telephone: 206.223.7000
7 Facsimile: 206.223.7107

8 Attorneys for Defendants London Market
9 Insurers

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON
12 AT SPOKANE

13 TECK METALS LTD.,

14 Plaintiff,

15 v.

16 CERTAIN UNDERWRITERS AT
17 LLOYD'S, LONDON AND CERTAIN
18 LONDON MARKET INSURANCE
19 COMPANIES,

20 Defendants.

NO. CV-05-00411-LRS

ANSWER OF THE LONDON
MARKET INSURERS TO
PLAINTIFF'S FOURTH
AMENDED COMPLAINT

JURY DEMAND

21 For their Answer to Teck Cominco Metals Ltd.'s Fourth Amended
22 Complaint, the London Market Insurers¹ state as follows:

¹The London Market Insurers include those certain Underwriters at Lloyd's,
London who severally subscribed to one or more of the policies of insurance
(continued . . .)

ANSWER TO FOURTH AMENDED COMPLAINT
AND JURY DEMAND - 1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101
(206) 223-7000

NATURE OF ACTION

1
2 1. The London Market Insurers admit that this is a civil action filed
3 by Teck Metals Ltd. ("Teck") alleging breach of contract and seeking a
4 declaratory judgment. To the extent the allegations contained in paragraph 1 of
5 the Fourth Amended Complaint refer to policies severally subscribed by one or
6 more of the London Market Insurers, the London Market Insurers state that the
7 policies speak for themselves, and this Court is directed to the policies for a
8 complete and accurate statement of their terms. The London Market Insurers
9 deny the allegations contained in paragraph 1 to the extent they are inconsistent
10 with the language of the London policies. Except as specifically admitted or
11 stated herein, the London Market Insurers are without knowledge or
12 information sufficient to form a belief as to the truth of the allegations
13 contained in paragraph 1 of the Fourth Amended Complaint and therefore deny
14 the same.

15 2. The London Market Insurers are without knowledge or information
16 sufficient to form a belief as to the truth of the allegations contained in
17 paragraph 2 of the Fourth Amended Complaint and therefore deny the same.
18
19

20 _____
 (. . . continued)

21 identified on Exhibit A hereto (hereinafter referred to as the "London Policies"),
22 and those London Market Insurance Companies identified on Exhibit B hereto.

THE PARTIES

1
2 3. The London Market Insurers admit the allegations contained in the
3 first two sentences of paragraph 3 of the Fourth Amended Complaint. The
4 London Market Insurers are without knowledge or information sufficient to
5 form a belief as to the truth of the allegations contained in the third sentence of
6 paragraph 3 of the Fourth Amended Complaint and therefore deny the same.

7 4. The London Market Insurers admit that they severally subscribed
8 to one or more of the London Policies, except that they deny, on information
9 and belief, that Switzerland Insurance Company UK Limited subscribed to any
10 of the London Policies. The London Policies are written contracts of insurance
11 prepared by Teck's London Brokers that speak for themselves, and this Court is
12 directed to the London Policies for a complete and accurate statement of their
13 terms. The London Market Insurers deny the allegations contained in
14 paragraph 4 to the extent they are inconsistent with the language of the London
15 Policies. Answering further, the London Market Insurers deny that they
16 subscribed to the policies in favor of Cominco Ltd. as surplus lines insurers
17 under RCW 48.15.040.

18 A. Answering the first and second sentences of paragraph 4.A.,
19 London Market Insurers admit that the subscribing Lloyd's Underwriters
20 severally subscribed to one or more of the London Policies as members of one
21 or more Lloyd's syndicates, whose principal place of business was or is in
22 London, England, and that the London Policies speak for themselves in regard

1 to the scope of coverage provided. London Market Insurers are without
2 knowledge or information sufficient to form a belief as to the truth of the
3 allegations contained in the third sentence of paragraph 4.A., and therefore deny
4 the same. Rather than factual allegations, the fourth sentence of paragraph 4.A.
5 appears to contain legal conclusions to which no response is necessary. To the
6 extent a response to the fourth sentence of paragraph 4.A. is deemed necessary,
7 London Market Insurers admit that one of the third-party administrators that
8 assists one segment of London Market Insurers in certain claims handling
9 activities maintains an office in Cambridge, Massachusetts, and deny all other
10 allegations contained therein.

11 B. Answering paragraph 4.B., London Market Insurers admit
12 that, with the exception of Switzerland Insurance Company UK Limited, the
13 London Market Companies identified on Exhibit B hereto severally subscribed
14 to one or more of the London Policies, and that the London Policies speak for
15 themselves in regard to the scope of coverage provided. Answering further, the
16 London Market Insurers admit, on information and belief, that such London
17 Market Companies are headquartered or were headquartered in various
18 locations outside the United States. Except as admitted or stated herein, the
19 London Market Insurers are without knowledge or information sufficient to
20 form a belief as to the truth of the allegations contained in paragraph 4.B. of the
21 Fourth Amended Complaint and therefore deny the same.
22

JURISDICTION AND VENUE

5. The London Market Insurers admit that the Court ruled that it had subject matter jurisdiction pursuant to 28 U.S.C. § 1441(d), but deny that Icarom plc is a third-party defendant in this action and further deny that subject matter jurisdiction exists.

6. The London Market Insurers deny the allegations contained in paragraph 6 of the Fourth Amended Complaint.

7. The London Market Insurers deny the allegations contained in paragraph 7 of the Fourth Amended Complaint.

THE LIABILITY INSURANCE POLICIES

8. The London Market Insurers admit that they severally subscribed to one or more of the London Policies prepared by Teck's London Brokers, except that they deny, on information and belief, that Switzerland Insurance Company UK Limited subscribed to any of the London Policies. The London Policies are written contracts of insurance prepared by Teck's London Brokers that speak for themselves, and this Court is directed to the London Policies for a complete and accurate statement of their terms. The London Market Insurers deny the allegations contained in paragraph 8 to the extent they are inconsistent with the language of the London Policies. Except as admitted or stated herein, the London Market Insurers are without knowledge or information sufficient to form a belief as to truth of the allegations contained in paragraph 8 of the Fourth Amended Complaint and therefore deny the same.

8 THE CLAIM

15 12. The London Market Insurers are without knowledge or information
16 sufficient to form a belief as to the truth of the allegations contained in
17 paragraph 12 of the Fourth Amended Complaint and therefore deny the same.

21
22

1 14. The London Market Insurers are without knowledge or information
2 sufficient to form a belief as to the truth of the allegations contained in
3 paragraph 14 of the Fourth Amended Complaint and therefore deny the same.

4 15. On information and belief, the London Market Insurers admit that
5 plaintiff refused to enter into the AOC requested by the U.S. EPA and further
6 that plaintiff offered to fund certain human health studies involving
7 contamination of the Columbia River and Lake Roosevelt. The London Market
8 Insurers are without knowledge or information sufficient to form a belief as to
9 the truth of the remaining allegations contained in paragraph 15 of the Fourth
10 Amended Complaint and therefore deny the same.

11 16. On information and belief, the London Market Insurers admit that
12 on or about December 11, 2003, the U.S. EPA issued a Unilateral
13 Administrative Order to Teck. The London Market Insurers are without
14 knowledge or information sufficient to form a belief as to the truth of the
15 remaining allegations contained in paragraph 16 of the Fourth Amended
16 Complaint.

17 17. The London Market Insurers state that the UAO speaks for itself
18 and they deny the allegations contained in paragraph 17 of the Fourth Amended
19 Complaint to the extent they are inconsistent with the language of the UAO.

20 18. On information and belief, the London Market Insurers admit the
21 allegations contained in paragraph 18 of the Fourth Amended Complaint.
22

1 19. The London Market Insurers state that the Complaint speaks for
2 itself and they deny the allegations contained in paragraph 19 of the Fourth
3 Amended Complaint to the extent they are inconsistent with the language of the
4 Complaint.

5 20. The London Market Insurers are without knowledge or information
6 sufficient to form a belief as to the truth of the allegations contained in
7 paragraph 20 of the Fourth Amended Complaint and therefore deny the same.

8 21. On information and belief, the London Market Insurers admit the
9 allegations contained in paragraph 21 of the Fourth Amended Complaint.

10 22. The London Market Insurers are without knowledge or information
11 sufficient to form a belief as to the truth of the allegations contained in
12 paragraph 22 of the Fourth Amended Complaint and therefore deny the same.

13 23. The London Market Insurers are without knowledge or information
14 sufficient to form a belief as to the truth of the allegations contained in
15 paragraph 23 of the Fourth Amended Complaint and therefore deny the same.

16 24. The London Market Insurers are without knowledge or information
17 sufficient to form a belief as to the truth of the allegations contained in
18 paragraph 24 of the Fourth Amended Complaint and therefore deny the same.

19 25. The London Market Insurers are without knowledge or information
20 sufficient to form a belief as to the truth of the allegations contained in
21 paragraph 25 of the Fourth Amended Complaint and therefore deny the same.
22

1 26. The London Market Insurers are without knowledge or information
2 sufficient to form a belief as to the truth of the allegations contained in
3 paragraph 26 of the Fourth Amended Complaint and therefore deny the same.

4 27. The London Market Insurers are without knowledge or information
5 sufficient to form a belief as to the truth of the allegations contained in
6 paragraph 27 of the Fourth Amended Complaint and therefore deny the same.

7 28. The London Market Insurers are without knowledge or information
8 sufficient to form a belief as to the truth of the allegations contained in
9 paragraph 28 of the Fourth Amended Complaint and therefore deny the same.

10 29. The London Market Insurers deny the allegations contained in
11 paragraph 29 of the Fourth Amended Complaint.

12 30. The London Market Insurers deny the allegations contained in
13 paragraph 30 of the Fourth Amended Complaint.

14 31. The London Market Insurers admit that they have filed a lawsuit in
15 British Columbia seeking a declaration that London Market Insurers are not
16 obligated to provide Teck with coverage for its insurance claims associated
17 several sites including Lake Roosevelt and the Upper Columbia River, and that
18 an actual controversy exists regarding portions of this coverage dispute. Except
19 as so admitted, the London Market Insurers deny the allegations contained in
20 paragraph 31 of the Fourth Amended Complaint.

1 32. The London Market Insurers are without knowledge or information
2 sufficient to form a belief as to the truth of the allegations contained in
3 paragraph 32 of the Fourth Amended Complaint and therefore deny the same.

4 **FIRST CAUSE OF ACTION**

5 33. The London Market Insurers repeat their answers to
6 paragraphs 1-32 of their Answer for their answer to paragraph 33.

7 34. The London Policies are written contracts of insurance prepared by
8 Teck's London Brokers that speak for themselves and this Court is directed to
9 the London Policies for a complete and accurate statement of their terms. The
10 London Market Insurers deny the allegations contained in paragraph 34 to the
11 extent they are inconsistent with the language of the London Policies. Except
12 as stated herein, the London Market Insurers are without knowledge or
13 information sufficient to form a belief as to the truth of the allegations
14 contained in paragraph 34 of the Fourth Amended Complaint and therefore
15 deny the same.

16 35. The London Market Insurers deny the allegations contained in the
17 paragraph 35 of the Fourth Amended Complaint.

18 36. The London Market Insurers deny the allegations contained in the
19 paragraph 36 of the Fourth Amended Complaint.

20 37. The London Market Insurers admit the allegations contained in the
21 first and second sentences of paragraph 37 of the Fourth Amended Complaint,
22 but deny that allegations contained in the third sentence of paragraph 37.

1 38. The London Market Insurers deny the allegations contained in the
2 paragraph 38 of the Fourth Amended Complaint.

3 **SECOND CAUSE OF ACTION**

4 39. The London Market Insurers repeat their answers to
5 paragraphs 1-38 as their answer to paragraph 39 of the Fourth Amended
6 Complaint.

7 40. The London Policies are written contracts of insurance prepared by
8 Teck's London Brokers that speak for themselves and this Court is directed to
9 the London Policies for a complete and accurate statement of their terms. The
10 London Market Insurers deny the allegations contained in paragraph 40 to the
11 extent they are inconsistent with the language of the London Policies. Except
12 as stated herein, the London Market Insurers are without knowledge or
13 information sufficient to form a belief as to the truth of the allegations
14 contained in paragraph 40 of the Fourth Amended Complaint and therefore
15 deny the same.

16 41. The London Market Insurers admit that Plaintiff made certain of
17 the London Market Insurers aware of the alleged Environmental Claims in
18 connection with discussions seeking to resolve the Environmental Claims and
19 other claims presented by Plaintiff, but deny that Teck provided proper notice
20 of such claims in accordance with the terms and conditions of the London
21 Policies. The London Market Insurers further admit that Teck expressly waived
22 any claims against the former Insurance Corporation of Ireland, now known as

1 Icarom, plc ("Icarom"). Except as so admitted, the London Market Insurers
2 deny the remaining allegations contained in paragraph 41 of the Fourth
3 Amended Complaint.

4 42. The London Market Insurers deny the allegations contained in the
5 first sentence of paragraph 42 of the Fourth Amended Complaint. Answering
6 further, the London Market Insurers deny that they have any obligation to
7 indemnify plaintiff in connection with the alleged Environmental Claims.

8 43. The London Market Insurers admit the allegations contained in the
9 first sentence of paragraph 43 of the Fourth Amended Complaint. The London
10 Market Insurers deny the remaining allegations contained in paragraph 43 of the
11 Fourth Amended Complaint.

12 44. The London Market Insurers deny the allegations contained in
13 paragraph 44 of the Fourth Amended Complaint.

14 **PLAINTIFF'S PRAYER FOR RELIEF**

15 45. The London Market Insurers deny the allegations and conclusions
16 of law contained in paragraph 45 of plaintiff's Prayer for Relief and further
17 deny that the plaintiff is entitled to any of the relief it seeks in this paragraph.

18 46. The London Market Insurers deny the allegations and conclusions
19 of law contained in paragraphs 46A-E of plaintiff's Prayer for Relief and
20 further deny that the plaintiff is entitled to any of the relief it seeks in these
21 paragraphs. The London Market Insurers admit the allegations and conclusions
22 of law contained in paragraph 46F of plaintiff's Prayer for Relief.

1 47. The London Market Insurers deny the allegations and conclusions
2 of law contained in paragraph 47 of plaintiff's Prayer for Relief and further
3 deny that the plaintiff is entitled to any of the relief it seeks in this paragraph.

4 48. The London Market Insurers deny the allegations and conclusions
5 of law contained in paragraph 48 of plaintiff's Prayer for Relief and further
6 deny that the plaintiff is entitled to any of the relief it seeks in this paragraph.

7 WHEREFORE, the London Market Insurers pray that plaintiff's Fourth
8 Amended Complaint be dismissed and that they have judgment for their costs
9 of this action.

10 **AFFIRMATIVE AND OTHER DEFENSES**
11 **TO DECLARATORY JUDGMENT CAUSE OF ACTION**

12 For their Affirmative and Other Defenses, the London Market Insurers,
13 severally and not jointly, state the following. By raising these defenses, the
14 London Market Insurers do not concede they have the burden of proof as to any
15 such defense:

16 1. Some or all of the London Market Insurers have not been properly
17 served with summons and complaint in this action.

18 2. This Court does not have subject matter and personal jurisdiction
19 as to some or all of the London Market Insurers.

20 3. Plaintiff's claims are barred in whole or in part by the pollution
21 exclusion clauses that appear in the London Policies.

1 4. The alleged "Environmental Claims" do not constitute covered
2 "occurrences" as that term is defined in the London Policies.

3 5. Plaintiff's claims are barred in whole or in part because the alleged
4 pollution and other harm in the Columbia River and Lake Roosevelt was not
5 unexpected or unintended, but rather was the natural and certain result of
6 mining and smelting operations as conducted by Plaintiff, was entirely expected
7 by Plaintiff and is therefore not an accident, an occurrence or an insurable risk.

8 6. Plaintiff's claims are barred to the extent that the costs claimed by
9 Plaintiff to remediate or address other injury resulting from its normal business
10 operations at Trail are costs associated with the normal business of mining and
11 smelting and are not the proper subject of liability insurance.

12 7. Plaintiff's claims are barred to the extent that any applicable self-
13 insured retentions or any underlying insurance is not properly and completely
14 exhausted.

15 8. Plaintiff failed to provide The London Market Insurers with timely
16 and adequate notice as required by the London Policies.

17 9. Plaintiff's claims are barred to the extent it seeks compensation
18 and/or indemnification for losses that have not yet arisen or for amounts
19 Plaintiff has not yet paid or become legally obligated to pay as the result of a
20 final judgment or settlement to which the London Market Insurers have agreed.

1 10. Plaintiff's claims are barred to the extent the alleged damages
2 and/or the alleged "Environmental Claims" were a known loss or a loss in
3 progress.

4 11. Plaintiff's claims are barred because some or all of the claims for
5 which Plaintiff seeks coverage are for equitable and injunctive relief for which
6 no coverage is available under the London Policies.

7 12. Plaintiff's claims are barred to the extent Plaintiff seeks coverage
8 for restitutionary damages or the costs of undertaking prophylactic measures
9 necessary to prevent further damages associated with the incidents giving rise to
10 the alleged Environmental Claims.

11 13. Plaintiff's claims are barred to the extent that the sums sought by
12 Plaintiff do not constitute sums Plaintiff is obligated to pay as "damages" within
13 the meaning and intent of the London Policies.

14 14. Plaintiff's claims are barred to the extent that the acts or omissions
15 giving rise to the alleged Environmental Claims were in violation of law,
16 governmental regulations or public policy, and/or to the extent Plaintiff seeks
17 indemnification for fines, penalties punitive and/or exemplary damages
18 assessed or which may be assessed against Plaintiff.

19 15. Plaintiff's claims are barred to the extent that the alleged property
20 damage occurred prior to the inception or after the expiration of, the London
21 Policies.
22

1 16. Plaintiff's claims are barred to the extent that Plaintiff voluntarily
2 made payments or assumed obligations or incurred expenses in connection with
3 the alleged Environmental Claims.

4 17. Plaintiff's claims are barred to the extent that Plaintiff or its brokers
5 and/or agents, during the process of placing, applying for, negotiating or
6 renewing the London Policies: (1) concealed relevant and material facts which
7 they were obligated to disclose; (2) failed to disclose relevant and material facts
8 which they were obligated to disclose; and/or (3) misrepresented relevant and
9 material facts.

10 18. Plaintiff's claims are barred to the extent that Plaintiff or its brokers
11 and/or agents violated their duty of good faith and fair dealing in connection
12 with placing, applying for, negotiating, renewing, obtaining, making or failing
13 to make claims under, or providing information regarding claims under the
14 London Policies.

15 19. Plaintiff's claims are barred to the extent that Plaintiff cannot
16 establish the complete terms and conditions of the London Policies.

17 20. Plaintiff's claims are barred to the extent that Plaintiff cannot prove
18 the existence of specific "property damage" and resulting monetary damages
19 during any specific London Policy period.

20 21. Plaintiff's claims are barred in whole or in part by the equitable
21 doctrine of laches.
22

1 22. Plaintiff's claims are barred in whole or in part by the doctrines of
2 waiver, estoppel and unclean hands.

3 23. Plaintiff's Complaint fails to state a claim against the London
4 Market Insurers.

5 24. Plaintiffs have failed to join indispensable parties in conformance
6 with Federal Rule of Civil Procedure 19.

7 25. Plaintiff's claims are barred in whole or in part by the applicable
8 statutes of limitations.

9 26. To the extent that Plaintiff has failed, in whole or in part, to
10 mitigate, minimize or avoid the losses it allegedly sustained, Teck's recovery
11 against London Market Insurers, if any, must be reduced by that amount.

12 27. The London Market Insurers liability to Teck, if any, is "several"
13 rather than "joint" and is limited to that percentage set forth under the insurance
14 contract(s) subscribed to by each of the individual London Market Insurers.

15 28. Plaintiff's claims are barred to the extent Teck has impaired or
16 prejudiced the London Market Insurers' rights of subrogation or contribution
17 against others, or London Markets Insurers' rights and abilities to investigate or
18 adjust Teck's claims, and/or otherwise impaired or prejudiced the London
19 Market Insurers.

20 29. Plaintiff's claims are barred, in whole or in part under the terms,
21 definitions, exclusions, limitations, or other provisions of the policies at issue.
22

1 30. To the extent, if any, London Market Insurers are obligated to
2 indemnify Teck, London Market Insurers are entitled to offsets for any
3 settlements Teck has reached with other insurers, for any self-insured
4 retentions, and for years during which time damage occurred and Teck was not
5 insured by the London Market Insurers.

6 31. Venue is not proper in the United States District Court for the
7 Eastern District of Washington.

8 **AFFIRMATIVE AND OTHER DEFENSES**
9 **TO BREACH OF CONTRACT CAUSE OF ACTION**

10 For their Affirmative and Other Defenses, the London Market Insurers,
11 severally and not jointly, state the following. By raising these defenses, the
12 London Market Insurers do not concede they have the burden of proof as to any
13 such defense:

14 1. Some or all of the London Market Insurers have not been properly
15 served with summons and complaint in this action.

16 2. This Court does not have subject matter and personal jurisdiction
17 as to some or all of the London Market Insurers.

18 3. Plaintiff's claims are barred in whole or in part by the pollution
19 exclusion clauses that appear in the London Policies.

20 4. The alleged "Environmental Claims" do not constitute covered
21 "occurrences" as that term is defined in the London Policies.

1 5. Plaintiff's claims are barred in whole or in part because the alleged
2 pollution and other harm in the Columbia River and Lake Roosevelt was not
3 unexpected or unintended, but rather was the natural and certain result of
4 mining and smelting operations as conducted by Plaintiff, was entirely expected
5 by Plaintiff and is therefore not an accident, an occurrence or an insurable risk.

6 6. Plaintiff's claims are barred to the extent that the costs claimed by
7 Plaintiff to remediate or address other injury resulting from its normal business
8 operations at Trail are costs associated with the normal business of mining and
9 smelting and are not the proper subject of liability insurance.

10 7. Plaintiff's claims are barred to the extent that any applicable self-
11 insured retentions or any underlying insurance is not properly and completely
12 exhausted.

13 8. Plaintiff failed to provide the London Market Insurers with timely
14 and adequate notice as required by the London Policies.

15 9. Plaintiff's claims are barred to the extent the alleged damages
16 and/or the alleged "Environmental Claims" were a known loss or a loss in
17 progress.

18 10. Plaintiff's claims are barred to the extent Plaintiff seeks coverage
19 for restitutionary damages or the costs of undertaking prophylactic measures
20 necessary to prevent further damages associated with the incidents giving rise to
21 the alleged Environmental Claims.
22

1 11. Plaintiff's claims are barred to the extent that the sums sought by
2 Plaintiff do not constitute sums Plaintiff is obligated to pay as "damages" within
3 the meaning and intent of the London Policies.

4 12. Plaintiff's claims are barred to the extent that the acts or omissions
5 giving rise to the alleged Environmental Claims were in violation of law,
6 governmental regulations or public policy, and/or to the extent Plaintiff seeks
7 indemnification for fines, penalties, punitive and/or exemplary damages
8 assessed or which may be assessed against Plaintiff.

9 13. Plaintiff's claims are barred to the extent that the alleged property
10 damage occurred prior to the inception or after the expiration of, the London
11 Policies.

12 14. Plaintiff's claims are barred to the extent that Plaintiff voluntarily
13 made payments or assumed obligations or incurred expenses in connection with
14 the alleged Environmental Claims.

15 15. Plaintiff's claims are barred to the extent that Plaintiff or its brokers
16 and/or agents, during the process of placing, applying for, negotiating or
17 renewing the London Policies: (1) concealed relevant and material facts which
18 they were obligated to disclose; (2) failed to disclose relevant and material facts
19 which they were obligated to disclose; and/or (3) misrepresented relevant and
20 material facts.

21 16. Plaintiff's claims are barred to the extent that Plaintiff or its brokers
22 and/or agents violated their duty of good faith and fair dealing in connection

1 with placing, applying for, negotiating, renewing, obtaining, making or failing
2 to make claims under, or providing information regarding claims under the
3 London Policies.

4 17. Plaintiff's claims are barred to the extent that Plaintiff cannot
5 establish the complete terms and conditions of the London Policies.

6 18. Plaintiff's claims are barred to the extent that Plaintiff cannot prove
7 the existence of specific "property damage" and resulting monetary damages
8 during any specific London Policy period.

9 19. Plaintiff's claims are barred in whole or in part by the equitable
10 doctrine of laches.

11 20. Plaintiff's claims are barred in whole or in part by the doctrines of
12 waiver, estoppel and unclean hands.

13 21. Plaintiff's Complaint fails to state a claim against the London
14 Market Insurers.

15 22. Plaintiff's have failed to join indispensable parties in conformance
16 with Federal Rule of Civil Procedure 19.

17 23. Plaintiff's claims are barred in whole or in part by the applicable
18 statutes of limitations.

19 24. To the extent that Plaintiff has failed, in whole or in part, to
20 mitigate, minimize or avoid the losses it allegedly sustained, Teck's recovery
21 against London Market Insurers, if any, must be reduced by that amount.
22

1 25. There is no coverage for plaintiff's claims because plaintiff has
2 failed to tender its claims to London Market Insurers for payment in accordance
3 with the terms and conditions of the London Policies.

4 26. The London Policies contain no duty to defend, and Teck's
5 primary insurers, rather than London Market Insurers, are potentially liable for
6 any defense costs incurred by Teck.

7 27. Teck has not incurred past costs.

8 28. Teck's claim for breach of contract is not ripe.

9 29. The London Market Insurers liability to Teck, if any, is "several"
10 rather than "joint" and is limited to that percentage set forth under the insurance
11 contract(s) subscribed to by each of the individual London Market Insurers.

12 30. Plaintiff's claims are barred to the extent Teck has impaired or
13 prejudiced the London Market Insurers' rights of subrogation or contribution
14 against others, or London Markets Insurers' rights and abilities to investigate or
15 adjust Teck's claims, and/or otherwise impaired or prejudiced the London
16 Market Insurers.

17 31. Plaintiff's claims are barred, in whole or in part under the terms,
18 definitions, exclusions, limitations, or other provisions of the policies at issue.

19 32. To the extent, if any, London Market Insurers are obligated to
20 indemnify Teck, London Market Insurers are entitled to offsets for any
21 settlements Teck has reached with other insurers, for any self-insured
22

1 retentions, and for years during which time damage occurred and Teck was not
2 insured by the London Market Insurers.

3 33. Venue is not proper in the United States District Court for the
4 Eastern District of Washington.

5 34. Teck is not entitled to damages for breach of contract to the extent
6 such damages were avoidable by Teck.

7 35. Teck is not entitled to damages for breach of contract to the extent
8 such damages were not reasonably foreseeable by London Market Insurers.

9 36. Teck is not entitled to damages for breach of contract to the extent
10 the amount of such damages is uncertain.

11 **NOTICE OF INTENT TO RELY ON FOREIGN LAW**

12 Pursuant to Local Rule of Civil Procedure 44.1.1, London Market
13 Insurers give notice that they intend to rely on the law of British Columbia,
14 Canada in this action.

15 **JURY DEMAND**

16 On January 25, 2010, Teck purported to withdraw its jury demand in this
17 matter. As set forth in their January 28, 2010 notice [Document 334], London
18 Market Insurers did not, and do not, consent to Teck's purported withdrawal of
19 its jury demand. In the event the Court determines that Teck's jury demand has
20 been withdrawn, is invalid and/or is otherwise ineffective, London Market
21 Insurers hereby demand a jury trial on all issues in this matter.

PRAYER FOR RELIEF

WHEREFORE, having fully responded to plaintiff's Complaint, and having stated their affirmative defenses, the London Market Insurers pray that judgment be entered against the plaintiff:

1. Denying all relief requested by the plaintiff and dismissing the Complaint against the London Market Insurers in its entirety, with prejudice;

2. Declaring that the London Market Insurers have no obligation to indemnify and/or reimburse plaintiff for any fees, expenses or costs alleged by the plaintiff to have been incurred in connection with the Underlying Action, and that the London Market Insurers have no other duties, obligations or liabilities to the plaintiff in connection with this matter; and

3. Awarding the London Market Insurers reasonable costs, expenses and attorneys' fees as permitted by law and such other relief as the Court deems just and proper.

DATED this 16th day of February, 2010.

LANE POWELL PC

By s/ Gabriel Baker
Cathy A. Spicer, WSBA No. 15416
Gabriel Baker, WSBA No. 28473
Attorneys for Defendants
London Market Insurers

Exhibit A

72-15398-1/PBC 24552N	HQ9550A00
HJ3078A00	HQ9551A00
HK0327A00	HR9539A00
HL0337A00	HR9540A00
HM9345A00	HR9541A00
HN9291A00	HS9539A00
HN9292A00	HS9540A00
HN9620A00	HS9541A00
HP9582A00	HT9539A00
HP9583A00	HT9540A00
HP9584A00	HT9541A00
HP9585A00	HU9539A00
HQ9548A00	HU9540A00
HQ9549A00	HU9541A00

Exhibit B

British Law Insurance Company Limited (sued herein as "British Law Ins. Co.")

Commercial Union Assurance Company PLC (sued herein as "Commercial Union Assurance Co.")

CNA Insurance Company Limited f/k/a Norwich Union Fire Insurance Society Limited (sued herein as "Norwich Union Fire Ins. Society Ltd. Trust")

Eagle Star Insurance Company Limited

English & Scottish Ins. Co.

Excess Insurance Company Limited

Fortis Insurance Company f/k/a Bishopsgate Insurance PLC and Bishopsgate Insurance Limited (sued herein as "Bishopsgate Ins. Co. Ltd.")

Indemnity Marine Assurance Company Limited

Leadenhall Insurance Co. Ltd.

London & Hull Maritime Insurance Company (UK) Limited (sued herein as "London & Hull Maritime Ins. Co. Ltd.")

Malvern Insurance Company (sued herein as "Malvern Insurance Company Ltd.")

Marlon Insurance Company Limited f/k/a Vesta (UK) Insurance Company Limited (sued herein as "Vesta (UK) Ins. Co.")

Minster Insurance Company Limited

Nippon Insurance Company of Europe Ltd f/k/a The Nippon Fire & Marine Insurance Company (Europe) Limited (sued herein as "Nippon Fire & Marine Ins. Co. (UK) Ltd.")

Northern Assurance Company Limited

1 Phoenix Assurance PLC (sued herein as "Phoenix Assurance Co.")
2 Provincial Insurance PLC (sued herein as "Provincial Ins. Co. Ltd.")
3 Skandia UK Insurance PLC (sued herein as "Skandia (UK) Ins. Co. Ltd.")
4 Suecia Re & Marine Insurance Company Limited f/k/a Hansa Marine Insurance
5 Company (UK) Limited (sued herein as "Hansa Marine Ins. Co. (UK) Ltd.")
6 Switzerland General Insurance Company (London) Limited (sued herein as
"Switzerland General Ins. Co.")
7 Switzerland Insurance Company UK Limited
8 Terra Nova Insurance Company (sued herein as "Terra Nova Ins. Co. Ltd.")
9 The Continental Insurance Company (UK) Limited
10 The Scottish Lion Insurance Company Limited (sued herein as "Scottish Lion
11 Ins. Co. Ltd.")
12 Threadneedle Insurance Company Limited
13 Tower Underwriting New Zealand Limited f/k/a The National Insurance
14 Company of New Zealand Limited (sued herein as "National Insurance
Company of New Zealand Ltd.")
15 Yasuda Fire & Marine Insurance Company of Europe Limited (sued herein as
"Yasuda Fire & Marine Ins. Co. (UK) Ltd.")
16
17
18
19
20
21
22

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WASHINGTON

3 CERTIFICATE OF SERVICE

4 I, Helen Van Buren, hereby make the following Declaration from personal
5 knowledge:

6 On February 16, 2010, I presented the attached document to the Clerk of the Court for
7 filing and uploading to the CM/EFC system. In accordance with their ECF registration
8 agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such
9 filing to the following attorney:

10 Jerry John Moberg
11 jjmoberg@canfield-associates.com

12 Mark J. Plumer
13 mplumer@orrick.com

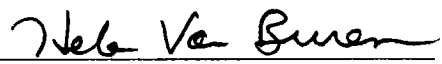
14 David F. Klein
15 dklein@orrick.com

16 Alexander J. Lathrop
17 alathrop@orrick.com

18 Daniel J. Dunne
19 ddunne@orrick.com

20 I HEREBY DECLARE UNDER PENALTY OF PERJURY under the laws of the
21 United States of America and the State of Washington that the foregoing is true and correct.

22 EXECUTED this 16th day of February, 2010, at Seattle, Washington.

23 
24 Helen Van Buren